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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

JOHN PETTITT, MURPHY LABRADOR } Case No.: 07-CV-05854 CW
CORPORATION, MAX GSD TRUST OF }
1998 BY BARBARA MUSSER, }
TRUSTEE. }
} **DECLARATION OF J. ED KERBY RE. FILING OF**
}

**DECLARATION OF J. EDWARD
KERLEY RE: FILING OF NOTICE
OF APPEAL**

Date: August 14, 2008
Time: 2:00 p.m.
Dept.: 2

JOHN CHIANG, individually and in his capacity as STATE CONTROLLER OF THE STATE OF CALIFORNIA,

Defendant.

I, J. Edward Kerley, declare:

1. I am an attorney at law duly licensed to practice before all courts of the State of California.

2. I am one of the attorneys of record for Plaintiffs, John Pettitt, Murphy Labrador Corporation, MAX GSD Trust of 1998 by Barbara Musser, Trustee.

3. On information and belief, this appeal is meritorious. The District Court misapplied Eleventh Amendment case law that has been superseded by opinions of the Ninth Circuit in holding that this suit was barred. The suit is a claim and demand upon the California

1 State Controller for return of the shares of Cybersource stock from the trust fund of which the
2 Controller is trustee.

3 4. The Court’s opinion found that the suit was barred because the money to provide
4 the shares or to pay Plaintiff the value of the shares would be from the Treasury of the State of
5 California, but this is contrary to the published decision of the Ninth Circuit. Under the relevant
6 holdings the money that the state holds in custody for the benefit of private individuals is not the
7 State’s money, but a separate trust fund especially where a permanent escheat determination has
8 not been made. The fund is designed specifically to permit applicants to gain access to it. An
9 Eleventh Amendment immunity from suit is thus inapplicable.

10 5. On this basis, we have caused the appeal to be taken.

11 6. If called as a witness, I could and would testify competently to the matters
12 asserted herein or as to the information and belief upon which I base the matters so asserted.

13 I declare under penalty of perjury, according to the laws of the State of California, that
14 the foregoing is true and correct, and that this declaration was executed on July 24, 2008, at San
15 Rafael, California.

/s/J. EDWARD KERLEY